

Independent Contractor Misclassifications is Focus of New Jersey-U.S. Labor Department Partnership

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Demonstrating a heightened focus on worker misclassification, the New Jersey Department of Labor has entered into a memorandum of cooperation with the U.S. Department of Labor with respect to enforcement actions related to independent contractor misclassifications.

Agency officials explained the arrangement promotes “coordinated investigations and shared resources.” While not singling out any one industry, the New Jersey Department of Labor’s press release mentioned construction, transportation, information technology, and “other in-demand businesses” as potentially non-compliant.

The August 10 announcement comes the same week the New Jersey Governor’s Task Force on Employee Misclassification convened. The Task Force, which consists of representatives from the New Jersey Departments of Labor, Agriculture, Economic Development, Human Services, Transportation, Treasury, and the Attorney General, was created by executive order to evaluate and improve the state’s enforcement efforts with respect to independent contractor misclassification.

The question of who is an “employee” and who is an “independent contractor” is a fact-specific inquiry that depends on a number of factors. Businesses typically do not pay employment taxes, unemployment insurance, or overtime, or contribute payments to the workers’ compensation fund for independent contractors. The state estimates upwards of \$80 million in underpaid unemployment and disability taxes since 2010.

The consequences of misclassifying employees for employers can include federal and state penalties for failure to pay minimum wage and overtime, liquidated damages, and attorneys’ fees. Businesses in New Jersey should review current practices and operations with respect to their use of independent contractors.

New Jersey follows the stringent “ABC Test” with respect to the proper classification of independent contractors. N.J.S.A. § 43:21-19(i)(6)(A)-(C). The independent contractor must: (A) be free from control or direction; (B) perform services outside the scope of services offered in the usual course of business; and (C) be customarily engaged in an independently established trade, occupation, profession, or business. Accordingly, any review of operations must be in line with the more rigorous requirements under New Jersey law.

Employers should consider conducting a self-audit to identify any employees misclassified as independent contractors. Jackson Lewis attorneys are ready to assist your business in conducting such evaluation and shaping strategies for worker classification.

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